

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY DeFRANCO,  
Plaintiff,

v.

WILLIAM WOLFE, et al.,  
Defendants.

)  
) No. CA-04-230-ERIE  
) Magistrate Judge Baxter  
) District Judge Cohill  
)  
)

TO THE HONORABLE JUDGE COHILL, JR.

APPEAL OF MAGISTRATE'S ORDER DOC.#173

AND NOW, comes plaintiff, who brings forth this appeal to the Magistrate Judges' Order denying his motion to compel discovery (Doc.#167) and in support avers:

1. On April 13, 2006, the Magistrate Judge held a telephonic hearing regarding a previous motion to compel discovery (Doc.#162); the Court held that motion in abeyance since that time. There has been no ruling on that motion.

2. Plaintiff filed the instant motion to compel discovery based upon the defendants' failure to provide requested documents and timely responding to interrogatories.

3. The Magistrate Judge has just simply denied plaintiff's motion to compel (Doc.#167) without any reason whatsoever. The discovery requests made are material to this case and without the requested material will adversely effect plaintiff's case.

4. Plaintiff has brought this case challenging the Department of Corrections policy on medically required z-code (single celling) and their retaliatory actions in removing plaintiff's. The z-code policy itself is being challenged as deliberate indifferent to inmates needs, and specifically, plaintiff.

5. Pursuant to Fed.R.Civ.P. Rule 26(b)(1), if the information sought is reasonably calculated to lead to the discovery of admissible evidence, than the Court should grant its disclosure. Here, plaintiff has been attempting to gain access to numerous documents, including his inmate files (DC-14) and the DOC "policy" on inmate z-codes. While the defendants have allowed his inspection of "redacted" files (which plaintiff objects to) they have completely denied his viewing of the z-code policy itself, which is being challenged and is material to this case.

6. Plaintiff is respectfully requesting this Honorable Court to vacate the Magistrate Judges' Order and Order the defendants to abide by the discovery rules and further, turn over the material z-code policy to plaintiff.

7. The Magistrate Judge denied plaintiff's Doc.#167 but has not yet ruled on Doc.#162, which the Court left in abeyance since the April 13, 2006 hearing.

WHEREFORE, plaintiff prays this Honorable Court will vacate the Magistrate Judges' Order (Doc.#173) and Order the defendants to provide the discovery requests and abide by said Rules.

Date: *MAY 31, 2006*

Respectfully submitted,

*Anthony DeFranco*  
 Anthony DeFranco CZ-3518  
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CERTIFICATE OF SERVICE  
 Service was made by US First  
 Class Mail to the Attorney  
 General's Office, 564 Forbes Ave.,  
 Pittsburgh, Pa. 15219, this date.

CLERK  
 U.S. DISTRICT COURT

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FILED